

Minutes

Labor-Management Advisory Council

July 1, 2008

10:00 a.m., Great Northern Hotel, Helena

LMAC Members Present: Lt. Governor John Bohlinger, Don Judge, Danny Lee, Riley Johnson, Jason Miller, Annette Hoffman, Bob Worthington, Doug Buman, Connie Welsh, Jerry Keck.

Project team members present: Mari Kindberg, State Auditor's Office; Jeff Lazarus, Diana Ferriter, Dave Elenbaas, Tyler Wiltgen, Anne Wolfinger, Employment Relations Division.

Others present: Mike Taylor, NCCI; Al Smith, MTLA; Trudy Winslow, MHS; Amy Salle, CorVel; John Gottbreht, Putman and Associates; Paige Tabor, DOA; Peter Strauss, Nancy Butler, MSF; Jon Bennion, MT Chamber; George Kaufman, Michaela Wolfinger, WorkSafeMT; Keith Ouzts, Marvin Jordan, MCCF; Tana Wilcox, Northwestern Energy; Mike Marsh, Midland Claims Service; Larry Jones, Liberty Northwest; Drew Geiger, Legislative Council.

I. Welcome and Introductions

All present introduced themselves.

II. Approval of Agenda/Minutes

The agenda was approved. The minutes of the May 6, 2008 meeting were approved.

II. Centers of Occupational Health and Education (COHE) and Project Help, State of Washington

Doug Buman presented Vicky Smith, the director of Project Help, an injured worker and employer advocacy program for the state of Washington.

Project Help provides assistance and counseling to injured workers and employers with the goal of resolving claims at the lowest possible level. The program is funded through a client services contract with the Washington Department of Labor and Industries (LNI). This arrangement allows the program to be non-political and neutral according to Smith. Services provided are free to the users of the program; Project Help utilizes a toll-free hotline to serve its customers. Smith handed out informational packets.

Smith also spoke about Washington's Center of Occupational Health and Education (COHE) Program. COHE is a cooperative research project undertaken by the LNI, the University of Washington, and medical centers in Renton and Spokane. The goals of the

program include creating easier access to medical care for injured workers, increased understanding of the system and the role providers play, timely medical treatment for workers, and better communication.

The COHE program has witnessed positive outcomes including better disability outcomes, reduced return-to-work durations, and lower disability and medical costs. These outcomes have been achieved through financial incentives for providers that share information quickly and the use of health service coordinators to facilitate communication between stakeholders in the return-to-work process.

IV. Medical Topics

Hospital and Ambulatory Facilities Fee Schedule

Jerry Keck first reviewed the methodologies for the non-facility and physician fee schedules. The Department wants to base the Hospital and Ambulatory Facilities fee schedules on similar methodology. The fee schedules would be based on costs, using CMS information, which has the most valid information. The Department's initial proposal, estimated to be cost neutral, was 55% above Medicare, using DRGs. This amount was calculated to be fair and allow hospitals reasonable profit.

During the administrative rule comment period, hospitals and ASCs expressed concern about reimbursements for outliers and implantables, whether the data was valid and legitimate and whether the proposed schedules were in fact revenue neutral. Providers asked for additional time to research the proposal.

Due to comments and concerns, the fee schedules will not be adopted as originally planned on July 1st. A new schedule proposal will be posted on August 28, with a implementation date of November 1st.

Due to additional time being spent on fee schedules, the utilization and treatment guidelines project has been delayed until the first of next year.

Electronic Billing for Hospitals and ASCs

Workers' compensation is the only system to submit paper billing. Hospitals would like to use electronic billing for workers' compensation bills. The Department had some discussions with hospitals and ASCs regarding this issue.

The Department's position is to encourage and facilitate electronic billing to the extent reasonable and possible, but not mandating. A large percentage of payers are currently prepared to do electronic billing; however, smaller TPAs are not prepared to do electronic billing. Electronic billing could remove a large amount of paperwork because the vast majority of surgeries are pre-authorized. These could be electronically billed.

Electronic billing for the non-facility side would be much more difficult. The International Association of Industrial Accidents Boards and Commissions (IAIABC) is

currently looking at developing electronic billing standards. Jerry will monitor their work.

The Department will look at this issue further, but not with the intent to mandate.

V. Montana 60 Summits Update

Georgiana (George) Kochman reported on the status of the Montana 60 Summits initiative. She stated that the Montana report from the three summits held in April has not yet been released by Dr. Christian. George mentioned that she is still in communication with Dr. Christian and hopes to have the report soon.

VI. WorkSafeMT

WorkSafeMT Foundation Board

George Kochman updated the LMAC on the status of the Board. A small group has been reviewing applications (handout provided). The goal is to have the Board represent a broad range of stakeholders. Staff is still looking for additional injured workers attorney and business representatives.

The Safety and SAW/RTW Committees are still recruiting and will accept all applications.

The initial Foundation Board meeting will be September 23rd. Work will begin on strategic plan and directions for WorkSafeMT.

WorkSafeMT and SAW/RTW Structure

Jerry Keck reviewed the background of why the LMAC was (a) focusing on safety and Return to Work (RTW) and (b) why the RTW committee was structured underneath the umbrella of WorkSafeMT organization. Discussion ensued.

Jerry requested discussion by the LMAC on the structure since the bylaws still need to be completed and approved. Discussion occurred on whether the initial development tasks of Return to Work should be separate from WorkSafeMT.

Don Judge moved to adopt the bylaws as prepared by the department. Bob Worthington seconded. Passed unanimously. It was also agreed that the department would prepare talking points for the next LMAC meeting and there would be discussions on the outcomes LMAC would like to see in safety and SAW/RTW.

VII. Legislative Concepts

Safety Statutes Rewrite

Jerry Keck explained that Montana's Safety Statutes were passed prior to the Federal Occupational Safety and Health Act and therefore DLI only has jurisdiction over public sector entities. These rewrites would outline DLI's role and jurisdiction in safety inspections. Jerry mentioned that DLI's legal staff is in the process of creating a crosswalk between the old bills. The committee proceeded to discuss the rewrite and its ramifications.

DLI Workers' Compensation Package

Jerry outlined the components of DLI's Workers' Compensation package. Sections one and two address religious groups that compete with private contractors while claiming volunteer status for their workers. Sections three and four address negotiation of workers' compensation claims with Montana Tribal Governments. Section five addresses an audit finding that DLI does not have authority to collect less than 3% of benefits paid on its assessments of insurers. The language would be changed to "collect up to 3%." Other components of the package include a stipulation that current Medicare codes are used as CPT codes by medical providers. The package also includes an outline of Department authority in regulating the sale of loss portfolios by self insurers to third parties.

Worker's Compensation Exemptions

The Department handed out the proposed new workers' compensation exemption language.

Don Judge moved to accept the language. Riley Johnson seconded. Passed unanimously.

WorkSafeMT Funding

Jerry Keck reviewed two options for funding WorkSafeMT:

- a) Increase workers' compensation assessment by up to 2%; and
- b) Add premium surcharge of 2.7% on Montana State Fund policies.

Discussion ensued. Bob Worthington moved to recommend an across the board 2% increase in the workers' compensation assessment (Option A) and continue work and development to incorporate the existence of current safety programs into the funding formula. Connie Welsh seconded. Passed unanimously.

LMAC Structure

Jerry Keck reviewed the status of the LMAC. The executive order creating the LMAC sunsets on December 15, 2008. The intent is to issue another agency order. It is also being explored whether to make the LMAC a statutory body.

The issue on whether the LMAC will be a statutorily created or department appointed body will be discussed further at the September meeting. The Lieutenant Governor will discuss this issue with the Governor, along with whether registered lobbyists may remain on the LMAC.

Claims Examiner Voluntary Certification Program

The Department distributed new draft language for the voluntary certification program for claims' examiners. Riley Johnson moved to accept the language. Jason Miller seconded. Passed unanimously.

VIII. Course and Scope of Employment

Diana Ferriter presented information on course and scope of employment in relation to workers' compensation. Diana reviewed two Supreme Court rulings on this subject including Bevan vs. Liberty Northwest and Michalak vs. Liberty Northwest. She and her staff also reviewed cases in Missouri, Arkansas, and Oklahoma, states determined to be similar to Montana in terms of law and judicial structure for workers' compensation. She summarized that determination of course and scope is fact specific to the case at hand and that Montana Supreme Court decisions are consistent with those in other states. Diana believes it may be impossible to legislatively define course and scope to satisfy the interests of business and injured workers because it is unknown what impact individual decisions have on costs to the system and stakeholders. The committee then proceeded to discuss course and scope of employment. The public also raised a number of comments on this issue.

Riley Johnson asked the ERD to develop recommendations and suggestions for a process of studying course and scope. Jerry offered that his staff would to put together a work plan this issue.

IX. Public Comment

Public comment was taken.

X. Next Steps

Action items include:

- The next meeting agenda will include a discussion on desired outcomes for WorkSafeMT and SAW/RTW;
- The department will complete and distribute a crosswalk identifying the changes / additions between the new and current safety bills;
- Jerry will be speaking to the Economic Affairs Interim Committee at their next meeting;
- Department staff will formulate process alternatives for discussing course and scope of employment.

Next Meeting

September 2, 2008, Best Western Great Northern Helena, 10:00 a.m. to 4:00 p.m.